

**From:** [Stephen Ward](#)  
**To:** [Osborn, Mark](#); [Jackson, Ryan \(Inhofe\)](#); [Miles Tolbert](#); [James Costello/R6/USEPA/US@EPA](#)  
**Cc:** [Ogahpah 1](#); [Sam Coleman/R6/USEPA/US@EPA](#)  
**Subject:** RE: Comments on Tar Creek Legislation  
**Date:** 07/08/2011 09:18 AM

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Mark:

My two cents worth is that the dual boundaries really are unavoidable. We need to define a zone for the LICRA Trust properties, and at the same time we need to define a different zone, the Superfund Site itself, for the ILCA acquisitions.

[Stephen Ward](#)

Attorney at Law



[CONNER & WINTERS, LLP](#)

Attorneys & Counselors at Law

4000 One Williams Center

Tulsa, OK 74172-0148

P 918.586.8978

F 918.586.8698

[SWard@cwlaw.com](mailto:SWard@cwlaw.com)

[www.cwlaw.com](http://www.cwlaw.com)

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**From:** Osborn, Mark [<mailto:OsboJM@Integriss-Health.com>]  
**Sent:** Friday, July 08, 2011 9:02 AM  
**To:** Stephen Ward; Jackson, Ryan (Inhofe); Miles Tolbert; James Costello  
**Cc:** Ogahpah 1; [Coleman.Sam@epamail.epa.gov](mailto:Coleman.Sam@epamail.epa.gov)  
**Subject:** RE: Comments on Tar Creek Legislation

Gentlemen,

Once again thank you to all who could join in yesterday. One item which we failed to discuss was the use of different defining boundaries for the two arms of the legislation (transfer of Trust lands (Sec.4) and consolidation of fractional interests (Sec.5)). After our discussion yesterday, which has quite effectively relieved my indigestion, I am comfortable with the use of the "Superfund Site" in Sec.5 while we would continue to use the map to define the area for "Covered Land" in Sec.4. Please let me know if you have any thoughts or concerns about this.

Mark

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**From:** Stephen Ward [mailto:sward@cwlaw.com]  
**Sent:** Thursday, July 07, 2011 2:34 PM  
**To:** Jackson, Ryan (Inhofe); Miles Tolbert; Osborn, Mark; James Costello  
**Cc:** Ogahpah 1; Coleman.Sam@epamail.epa.gov  
**Subject:** Comments on Tar Creek Legislation

Ryan, Mark, Jim, and Miles:

I have visited with Chairman Berrey concerning a conference call this week, and he can be available to participate late tomorrow afternoon. We just need to give him advance notice about the time for the call. In preparation for the call, following are some preliminary responses to Mark's questions, in redline:

*1) The 6-6-11 draft has changed the title and purpose of the legislation to include economic development. While this may apply to the consolidation of fractional interests and chat it conflicts with the restrictions which we have spelled out for the transfer of LICRAT lands where we list all the ways it **can't** be used for economic development. I am concerned that this will present the wrong impression, particularly to board members and the press. In attempting to clarify this I have rewritten Sec.2 to be more to my liking and more consistent with our purpose as I understand it. This is the first piece of federal legislation I have ever helped to write, so please feel free to save me from myself. It is as follows:*

*Sec.2. PURPOSE*

*The purpose of this Act is to facilitate and streamline the remediation of the Tar Creek Superfund Site by providing for the transfer of ownership interests in land the State of Oklahoma acquired under authority of Public Law 110-114 (121 Stat. 1041) for the purpose of relocation of the individuals residing thereon and to encourage environmental remediation and economic development of the area by providing for the consolidation of fractional ownership in Indian lands and chat within the Superfund Site;*

*The State of Oklahoma now desires to divest itself of such lands;*

*The Quapaw Tribe of Indians of Oklahoma has informed Congress, the Department of the Interior, and the State of Oklahoma that it desires to acquire such lands for the purpose of environmental remediation and to consolidate the interests of individual Indians to promote environmental remediation and economic development;*

*Congress desires to facilitate the transfer desired by the State and requested by the Tribe.*

*As the Tribe understands, the changes to the preamble to the resolution were made, for the most part, by Senator Inhofe's office and/or the Senate staff, and there were some specific, legislative reasons for doing so. As we indicated in the June call, the Tribe concurs with the changes made by Senator Inhofe's office, although we are glad to discuss Mark's proposals.*

*As a side note, some of the lands owned by the Trust were not acquired specifically for the*

*purpose or relocation of residents (i.e. the lands transferred to the Trust by the ORA as required in the legislation). Do these need to be noted separately? This distinction does not seem critical to the Tribe, and it might unnecessarily complicate the resolution. Again, though, we are glad to discuss this issue.*

*2) What is the difference between "Trust Land" and "Restricted Land" in Sec.3(8)? These are the two types of Indian land title. "Trust" land is land the title to which is held in the name of the United States in trust for the benefit of a tribe. "Restricted" land is land the title to which is held in the name of an individual Indian or a tribe, subject to restrictions by the United States against its alienation. The definitions in the bill are taken from other federal law.*

*3) What does it mean when it says "held...subject to restrictions by the United States against alienation"? It means that the land cannot be sold with the approval of the Secretary of the Interior.*

*4) In Sec.4 (c) (1) and (2) there are multiple phrases strung together with opposite intent. Legally speaking is the punctuation correct? In other words, is it standard for "excluding" to apply to all subsequent phrases in the sentence? This language was agreed upon by the parties last winter. It essentially sets out broader uses that are prohibited, with some specific exceptions. The Tribe continues to concur with this approach.*

*5) As for Sec.5 I have multiple questions.*

*-Does the Tribe pay the individual Indian for their fractional share? Yes. Federal law, the Indian Land Consolidation Act ("ILCA"), governs this process. An allottee receives no less than appraised value for the fractional undivided share. Because the fractional shares are so small and are worth so little in many cases, the Tribe sometimes pays more to make it worthwhile for the Indian owner to sell.*

*-Does the consolidation of fractional shares include mineral rights and chat ownership? Mineral interests can be acquired under ILCA, although, BIA appraisals in recent years essentially have put zero value on them, and conveyances of these interests have not been worthwhile.*

*-What if the Tribe cannot acquire complete ownership of the parcel of land? It would continue to have fractional ownership. If the Tribe can acquire more than 50% ownership in the Indian interests, the Tribe can, under certain circumstances outlined in ILCA, buy remaining fractional shares without the Indian owners' approval.*

*-Why does this process not take land off the tax rolls? Restricted Indian and trust land is not on the state tax rolls now, and it has not been since allotment.*

*-Will this section allow the purchase of chat rights on land that is not held in Trust or that is "Restricted Land"? That is somewhat of an open question. Right now, the Secretary will not allow the Tribe to use ILCA to consolidate fractional interests in Indian lands. The*

Tribe is proposing Section 5 to enable it to use ILCA within the Superfund Site, so that some of the land can be consolidated, thus making remedial efforts by the EPA easier. Currently, it is extremely difficult to make the BIA's regulations work when there are 100 or more undivided Indian owners in a tract. ILCA is one of the best and most taxpayer friendly pieces of legislation ever passed in the area of Indian Affairs. Congress found a few years ago that management of fractional shares of Indian land costs millions and millions of dollars of taxpayer monies.

*-What is the Indian Land Consolidation Act and why will the DOI not allow its use in the Superfund Site?* ILCA is legislation that allows Indian tribes to purchase, and thereby consolidate title, in highly fractionated tracts of Indian land. The Secretary imposed an informal moratorium on the use of ILCA within the Tar Creek Superfund Site several years ago.

*-Am I correct in my newfound understanding that Sec.5 will not cause any new lands to be put into Trust and thus to be taken off the tax rolls?* Section 5 permits the Tribe to acquire title to restricted Indian lands, and the Tribe could apply to have that title conveyed into trust. However, ILCA applies solely to existing Indian lands, which are not on the state tax rolls. The short answer to your question is that Section 5 will not remove land from the state tax rolls.

*-How does the acquisition of chat work? Will any new land be put into Trust because of Sec.5(c)?* No. This Section is included to permit the Tribe, at the same time it purchases fractional interests in restricted Indian land, also to buy fractional shares in restricted or trust chat. The EPA needs to have the ownership in Indian chat consolidated so that it can be more easily sold or otherwise disposed of.

It would be nice to have examples of each type of transfer so that I can use them in my attempts to explain the legislation. As you can probably tell by now, the simpler the better.

6) As for Sec.7(c) if the EPA wants this and thinks it is necessary I will support it wholeheartedly as long as Jim can explain to me what it means. Currently, Indian land cannot be conveyed to the Tribe without environmental review under the National Environmental Policy Act ("NEPA"). The Tribe proposed this language, and we thought last winter that the LICRA Trust concurred, because NEPA review of fractional Indian interests essentially could destroy the purpose of Section 5. NEPA review—even for each conveyance of a fractional interest—could be costly and time-consuming, both for the Tribe and the BIA. For example, if a fractional interest is appraised at \$15 (there are many such interests), this means the Tribe might have to produce extensive environmental reports, and it also means that the BIA would have to pass on the requirements under NEPA on each tract. In fact, if NEPA is applied to ILCA conveyances, they will not occur. The basic bill, without this provision, probably will not exempt this process from NEPA review.

7) As for Sec.7(d) it seems to me that this should be one sentence and the period after "interest" replaced with a comma.

8) And finally one last question for Steve. Do you foresee any criticism from the general public about this law? Of course it's very difficult to know what someone might object to, and this issue probably is better addressed by John or Ryan. This bill makes clear that the LICRA relocation lands will not be used for new residential or commercial use, and, in fact, the range of what the Tribe can use that land for basically is limited to remediation, hunting, development of wetlands, and agriculture. Since the LICRA lands are scattered tracts, and since they still need to be cleaned up, they really do not lend themselves even to agricultural uses right now. From the perspective of the former owners, these tracts likely will have no activity on them other than remediation for many years. Concerning Section 6, the Tribe has had an active ILCA program outside the Superfund Site for several years. Since it does not implicate the tax rolls or non-Indians, I really cannot see that it would draw any public attention after, perhaps, the initial publicity.

Stephen Ward

Attorney at Law



CONNER & WINTERS, LLP

Attorneys & Counselors at Law

4000 One Williams Center

Tulsa, OK 74172-0148

P 918.586.8978

F 918.586.8698

[SWard@cwlaw.com](mailto:SWard@cwlaw.com)

[www.cwlaw.com](http://www.cwlaw.com)

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